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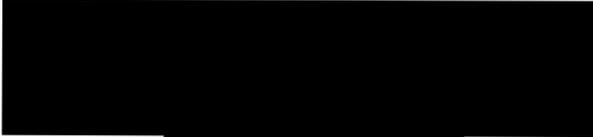
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI

Date:

JUN 27 2008

MSC 05 257 14007

IN RE: Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Miami. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that her application for temporary resident status should be granted.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the

United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

AFFIDAVITS

- [REDACTED]; and [REDACTED]

Each of these sworn affidavits appear on the same preprinted form, and contain similar information. Two of the affidavits attest that the affiant is a friend of the applicant, and that the affiant has knowledge that the applicant has lived in the United States since 1985. The affiant in the third affidavit states that he is the uncle of the applicant, and that the applicant has resided in the United States since 1981.

[REDACTED] states in his affidavit that he and the applicant are friends, and that the applicant has resided in the United States since 1985. The affidavit provides no additional information relative to the applicant’s claim of continuous unlawful residence during the requisite period.

[REDACTED] states in his affidavit that he and the applicant are “best” friends, and that the applicant has resided in the United States since 1985. The affidavit provides no additional information relative to the applicant’s claim of continuous unlawful residence during the requisite period.

states in his affidavit that he is the applicant's uncle, and that the applicant has resided in the United States since December of 1981. The affidavit provides no additional information relative to the applicant's claim of continuous unlawful residence during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the affiants provided detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the applicant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative and relative, affidavits and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the affidavits submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

The school records submitted are sufficient to establish the applicant's residence for that part of the requisite period commencing in 1985. However, only the affidavit of ' pertains to the period prior to 1985, and it lacks sufficiently extensive and verifiable details to demonstrate the reliability of the assertion that the applicant began to reside in the United States unlawfully prior to 1982.

- ADDITIONAL EVIDENCE

The applicant submitted documentation from United States public school systems establishing that the applicant was in the United States and attending schools in 1985. The record does not contain any documentation, other than the affidavit of (the applicant's uncle) discussed above and the applicant's personal affirmations, regarding the applicant's presence in the country prior to 1985.

The applicant submitted additional documents detailing the applicant's education, training, immunizations, and the filing of taxes for periods of time subsequent to the requisite time period for the immigration benefit sought. Those documents, however, have no bearing on the adjudication of the present claim, and accordingly are not deemed relevant. Therefore, they will not be further discussed.

The additional evidence submitted and listed above does not establish the applicant's presence in the United States for that portion of the requisite time period prior to 1985. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country prior to 1985. The absence of probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value in support of her claim, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.